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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1962

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

ERIE RESISTOR CORPORATION AND INTERNATIONAL UNION OF
ELECTRICAL, RADIO AND MACHINE WORKERS, LOCAL 613,
AFL-CIO

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM OF RESPONDENT UNION

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Radio and Machine Workers,
Local 613, AFL-CIO.*

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Respondent, International Union of Electrical, Radio and Machine Workers, Local 613, AFL-CIO, hereinafter referred to as the Union, was Charging Party before the National Labor Relations Board and Intervenor in the Board's enforcement proceeding in the Court below.

The Union fully agrees with the Board that the Petition for Certiorari should be granted for all the reasons set forth in the Board's petition as well as the reasons which follow.

The question presented in the Board's Petition is one of fundamental importance both to the administration of the National Labor Relations Act and to the exercise of the right to strike guaranteed therein.

As the Board found in its unanimous decision below, a grant of superseniority to nonstrikers subjects strikers to fears and coercive pressures far beyond those raised by permanent replacement of strikers. (R. 10a-16a). Unlike replacement, it affects the future employment tenure of all strikers and not merely those who are replaced. It offers junior strikers a rare opportunity of incalculable value to gain years of seniority over and above their fellow striking employees by abandoning their concerted activity. It threatens debasement of actual seniority to those of long service if they fail to abandon the strike.

The combination of threat and promise, if lawful, would materially alter the practical significance of the right to strike guaranteed by Section 13 of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), in every case in which a strike occurs or is a possibility. For imposition of superseniority would then loom as a possible counteraction to any strike which succeeds in exerting economic pressure, and the possibility of its institution would play a major role in the exercise of the right to strike.

Moreover, the Court's interpretation of Section 8 (a)(3) of the National Labor Relations Act has impact far beyond its application to superseniority. It raises grave questions as to the application of that Section whenever acts which are inherently discriminatory are taken in the name of an economic motive.

Conclusion

For the reasons set forth above and in the Board's Petition for Writ of Certiorari, the Petition should be granted.

Respectfully submitted,

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